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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/890,919	08/07/2001	Michael David Bell	CM2034	1792

27752            7590            03/13/2003

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[REDACTED] EXAMINER

[REDACTED] WELLS, LAUREN Q

[REDACTED] ART UNIT      [REDACTED] PAPER NUMBER

1617

DATE MAILED: 03/13/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	09/890,919	BELL ET AL.	
	<b>Examiner</b>	<b>Art Unit</b>	
	Lauren Q Wells	1617	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) Responsive to communication(s) filed on 22 January 2003.
- 2a) This action is **FINAL**.      2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) Claim(s) 1-13 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) Claim(s) \_\_\_\_\_ is/are allowed.
- 6) Claim(s) 1-13 is/are rejected.
- 7) Claim(s) \_\_\_\_\_ is/are objected to.
- 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) The proposed drawing correction filed on \_\_\_\_\_ is: a) approved b) disapproved by the Examiner.  
If approved, corrected drawings are required in reply to this Office action.
- 12) The oath or declaration is objected to by the Examiner.

#### Priority under 35 U.S.C. §§ 119 and 120

- 13) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) All b) Some \* c) None of:
1. Certified copies of the priority documents have been received.
  2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 14) Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) The translation of the foreign language provisional application has been received.
- 15) Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

#### Attachment(s)

- |  |  |
|--|--|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)                    | 4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s). _____ . |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)           | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)  |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____ . | 6) <input type="checkbox"/> Other: _____ .                                   |

## **DETAILED ACTION**

Claims 1-13 are pending. The Amendment filed 1/21/03, Paper No. 10, amended claims 1, 3, 4, 6, and 11-13, and amended the specification.

### ***Response to Arguments***

Applicant's arguments with respect to the 35 USC 102 and 103 rejections over claims 1-13 have been considered but are moot in view of the new ground(s) of rejection.

Applicant's amendment filed 1/21/03, is sufficient to overcome the 35 USC 112 rejections and the objection to the specification in the previous Office Action.

### ***Claim Rejections - 35 USC § 112***

The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

Claims 1-13 are rejected under 35 U.S.C. 112, first paragraph, as containing subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention.

(i) The phrase "0.01% to about 1.0% of C10 to C16 mono, -di and -tri acyl sugar esters" in claim 1 (lines 7-8) is new and was not recited in the original disclosure.

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claim 13 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

(i) The phrase “left on the skin” in claim 13 is vague and indefinite, as it is confusing. Are not all cosmetic compositions for skin care left on the skin? The limitation of “left on the skin” is confusing.

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-9 are rejected under 35 U.S.C. 103(a) as being unpatentable over Shana (WO 94/03150).

Shana is directed to compositions intended for washing the human body (abstract) comprising applying the composition to the skin and hair. Taught is a composition comprising an oily components, 1-50% non-ionic sugar based surfactant, and 0.001-2% water soluble cationic polymer, see pg. 9. Alkylpolyglycosides of the formula RO-(G)<sub>n</sub>, wherein R is C<sub>5</sub>-C<sub>20</sub>, and G is glucose, xylose, lactose, fructose, mannose and derivatives thereof, are taught as sugar based surfactants, see pg. 5. The compositions can additionally comprise a polyol, preferably glycerol (see page 8, lines 30-32). Exemplified is a composition comprising alkyl polysaccharide 600, 10% glycerol and 5% guar hydroxy propyl tri-methyl ammonium chloride, see the examples in Table 1 at page 13. The compositions in Table 1 do not contain an anionic,

zwitterionic or amphoteric surfactant. The reference lacks an exemplification of the instant invention wherein the sugar ester (the alkyl polysaccharide) comprising 0.01-1% of the composition.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to exemplify a composition of Shana wherein the alkyl polysaccharide comprises 1% of the composition because Shana teaches that the non-ionic sugar based surfactant (the alkyl polysaccharide) can comprise 1% of the composition and because it has been held that where the general conditions of a claim are disclosed in the prior art, discovering the optimum or workable ranges involves only routine skill in the art. In re Aller, 105 USPQ 233.

Claims 10-13 are rejected under 35 U.S.C. 103(a) as being unpatentable over Shana as applied to claims 1-9 above, and further in view of The Handbook of Cosmetic Science and Technology.

Shana is applied as discussed above. The reference lacks anionic surfactants.

The Handbook of Cosmetic Science and Technology teaches that anionic surfactants produce a desireable combination of rich foam and excellent mildness and that they are also extraordinarily good hydrotropes and are remarkably compatible with a wide range of other surfactants, including some cationic conditioning agents. See page 222.

Thus, it would have been obvious to one of ordinary skill in the art at the time the invention was made to add anionic surfactants to the composition of Shana et al. because of the expectation of achieving a composition with a rich foam and excellent mildness.

While the Handbook of Cosmetic Science and Technology is silent regarding its ratio with cationic surfactant, it is respectfully pointed out that it has been held that where the general

conditions of a claim are disclosed in the prior art, discovering the optimum or workable ranges involves only routine skill in the art. In re Aller, 105 USPQ 233.

***Conclusion***

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Lauren Q Wells whose telephone number is (703) 305-1878. The examiner can normally be reached on M-F (7-5:30), with alternate Mondays off.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Sreeni Padmanabhan can be reached on (703)305-1877. The fax phone numbers for the organization where this application or proceeding is assigned are (703) 872-9306 for regular communications and (703) 872-9307 for After Final communications.

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Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-1234.

lqw  
March 5, 2003

  
SREENI PADMANABHAN  
PRIMARY EXAMINER  
3/9/03